



US Army Corps
of Engineers
Tulsa District

Public Notice

Reply To:
U.S. Army Corps of Engineers
Attn: CESWT-PE-R
1645 S. 101 E. Ave.
Tulsa, OK 74128-4306

Public Notice Date

October 14, 1998

Postmaster Please Post Conspicuously Until:

November 15, 1998

SECOND PUBLIC NOTICE

REQUEST FOR COMMENTS ON PROPOSED REGIONAL CONDITIONS FOR NATIONWIDE PERMITS PROPOSED ON JULY 1, 1998

On July 1, 1998, the U.S. Army Corps of Engineers (Corps) published its proposal to issue 6 new Nationwide Permits (NWPs) and modify 6 existing NWPs in Part II of the *Federal Register* (63 FR 36040 – 36078). The Tulsa District issued a public notice on July 1, 1998, to solicit comments on the proposed new and modified NWPs, as well as proposed Corps regional conditions, for a 30-day comment period. In that public notice, the Tulsa District requested comments and suggestions for additional Corps regional conditions for the proposed new and modified NWPs to ensure that those NWPs authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively. The Tulsa District also held a public meeting on August 11, 1998, to discuss the Corps regional conditioning process for the proposed new and modified NWPs and to receive suggestions for additional Corps regional conditions.

The purpose of the NWP regional conditions is to ensure that the NWPs authorize only those activities that result in minimal adverse effects on the aquatic environment, individually and cumulatively. The NWPs are developed at Corps Headquarters to authorize most activities that would result in minimal adverse environmental effects on the aquatic environment. However, the Corps determines whether the minimal effects test is met from a watershed perspective, and whether regional conditions are necessary to account for differences in aquatic resource functions and values across the country.

There are two types of regional conditions: 401 regional conditions and Corps regional conditions. The 401 regional conditions are developed by the State under Section 401 of the Clean Water Act and become regional conditions to NWPs. The 401 regional conditions are added to the NWPs and announced by a District public notice. The public does not have the opportunity to comment on 401 regional conditions through the Corps public notice process, but rather through the State process. The Corps regional conditions are proposed by the District Engineer for a 30-day comment period and are reviewed and approved by the Division Engineer. For more details on the regional conditioning process, please refer to the July 1, 1998, *Federal Register* notice (63 FR 36048 – 36049).

In this public notice, the Tulsa District is proposing Corps regional conditions applicable to all NWPs as well as the proposed new and modified NWPs (Enclosure 1). The Tulsa District believes that these Corps regional conditions may be necessary to ensure that the activities authorized by these NWPs will result in minimal adverse effects on the aquatic environment, individually or cumulatively. The Corps received additional suggested regional conditions (Enclosures 2 and 3) in response to the July 1, 1998, public notice issued by the

District. The Tulsa District is requesting comments on these suggested regional conditions, as well as the regional conditions we are today proposing (Enclosure 1). The suggested regional conditions listed in Enclosures 2 and 3 will be approved by the Division Engineer if they are necessary to ensure that the NWP's will authorize only those activities that result in minimal adverse effects on the aquatic environment, individually and cumulatively. The proposed regional conditions listed in Enclosures 2 and 3 that are not necessary to ensure that the NWP's authorize only activities with minimal adverse effects will be considered by the Division Engineer; however, any proposed regional conditions must comply with the following prior to being adopted by the Corps: 1) provide value added for the aquatic environment, 2) not be excessively burdensome on the regulated public, 3) be able to be implemented by the Corps with the resources available to the Corps, 4) not conflict with Corps regulations, 5) not require an illegal action by the Corps, 6) not require action that the Corps or other Federal agencies would normally take, and 7) not increase the extent or scope of work authorized by the Corps.

When Corps regional conditions are approved by the Division Engineer, those regional conditions will become effective when the new and modified NWP's become effective. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in Tulsa District. Comments on the proposed Corps regional conditions, as well as any other suggested Corps regional conditions, should be submitted in writing to: Mr. Shane Charlson, P.W.S., telephone 918-669-7400, FAX 918-669-4306, at USACE, CESWT-PE-R, 1645 South 101st East Avenue, Tulsa, OK 74128-4629. Comments are due by November 14, 1998. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other Corps district offices.

The States are reviewing the NWP's to determine the need for 401 regional conditions. The Tulsa District is working with the States to ensure that the Corps and 401 regional conditions will ensure that the NWP's authorize only those activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Districts and States can coordinate workload to maximize the effective use of their respective resources and avoid unnecessary duplication of workload.

Provisional determinations, including environmental documents, have been prepared indicating that these NWP's comply with the requirements for issuance under general permit authority. The Corps will prepare final environmental decision documents when the NWP's are issued or modified. These documents will be available when the final NWP's are issued, at the Tulsa District Office or on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. Furthermore, these NWP decision documents will be supplemented by Division Engineers to address their decision concerning regional conditions for the NWP's. These supplemental documents will be available at the Tulsa District Office when the final NWP's become effective.

The July 1, 1998, *Federal Register* notice for the proposed new and modified NWP's is available on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. As an alternate, World Wide Web users can access the *Federal Register* through the Government Printing Office (GPO) at http://www.access.gpo.gov/su_docs/aces/aaces002.html.

Enclosure 1 is Tulsa District's proposed regional conditions applicable to all NWP's as well as the proposed new and modified NWP's and a summary of the suggested regional conditions in response to the July 1, 1998, public notice (Enclosure 2 and 3). The text of the proposed NWP's is also available at the District office and on the Internet at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1998_register&docid=98-17399

ENCLOSURE 1

Tulsa District's proposed regional conditions applicable to all NWP's as well as the proposed new and modified NWP's.

In addition to Nationwide Permit General Condition "13. Notification", a prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) for discharges into the following list of waters of the United States. The District Engineer will, upon receipt of a notification, provide immediately, *e.g.*, facsimile transmission, overnight mail, or other expeditious manner, a copy to the Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Oklahoma Department of Environmental Quality, the Oklahoma Department of Wildlife Conservation, the Oklahoma Scenic Rivers Commission, the Oklahoma State Historic Preservation Officer (SHPO), and the Oklahoma State Archeologist. These agencies will then have 15 calendar days from the date the material is transmitted to telephone or fax the District Engineer with substantive, site-specific comments. The District Engineer will fully consider agency comments received within the specified time frame. The District Engineer will indicate in the administrative record associated with each notification that the resource agency's concerns were considered.

The following locations and waters are subject to the Notification requirements stated above:

Flint Creek (all)

Illinois River – North from the confluence with the Barren Fork River in Cherokee, Adair, and Delaware Counties to the state line.

Barren Fork River – In Adair and Cherokee Counties from the present alignment of U.S. Highway 59 west to the Illinois River.

Mountain Fork River – Above 600-feet m.s.l. elevation level of Broken Bow Reservoir in McCurtain and LeFlore Counties.

Little and Big Lee Creek – Above 420-feet m.s.l. in Adair and Sequoyah Counties.

Waters designated as **Outstanding Resource Waters** in the Oklahoma Water Quality Standards.

Waters afforded special protections in **Appendix B** of the Oklahoma Water Quality Standards.

ENCLOSURE 2

Summary of the suggested regional conditions in response to the July 1, 1998, public notice.

1. Tulsa District should evaluate impacts to adjacent terraces specific to the area of the disturbance of each proposal in addition to the area below the ordinary high water mark of affected waters.
2. Tulsa District should revoke all of the new proposed NWP's and existing NWP's 3, 7, 12, 14, 27, 29, and 40.
3. Tulsa District should require notification for any proposal within the entire watershed of Outstanding Resource Waters, Appendix B waters, High Quality Waters, Sensitive Water Supplies, and all waters not in attainment as well as source areas for drinking water. Tulsa District should require notification for any proposal in State Parks, National Wildlife Refuges, and State Wildlife Management Areas.
4. Tulsa District should conduct a full individual review on proposed projects. Tulsa District should conduct a site visit as part of each review and allow for review of each project by the U.S. Fish and Wildlife Service and appropriate State agencies.
5. Tulsa District should condition any proposal under NWP A or NWP 40 to require notification in all waters of the U.S. for any channelization or any proposal greater than 500 linear feet and coordinate with the agencies.
6. Tulsa District should condition NWP 40 to not allow the removal of riparian zones.
7. Tulsa District should condition NWP 40 to require Notification for any proposal and coordinate with the agencies.
8. Tulsa District should condition NWP 40 to require Notification for any proposal in an Oklahoma Heritage Inventory listing of rare aquatic resources for Oklahoma and coordinate with the agencies.
9. Tulsa District should condition NWP C criteria (f) to also exclude intermittent and ephemeral streams.
10. Tulsa District should condition NWP's A, C, and E to exclude stream relocation and/or diversion.
11. Tulsa District should condition NWP F to require Notification for any proposal in all waters of the U.S. and coordinate with the agencies.
12. Tulsa District should exclude stream relocation and diversion from all NWP's

Continued from Enclosure 2

13. Tulsa District should condition NWP C and all other NWPs to exclude the construction of stormwater management systems in perennial or intermittent streams, stormwater detention and retention ponds, and to exclude stream channel widening or channelization to improve conveyance of storm flows.
14. Where feasible, Tulsa District should condition NWP 7, and other similar NWPs for dredging activities, to exclude perennial streams without a permit condition to avoid dredging during fish spawning and migration periods.
15. Tulsa District should condition NWP 40 to exclude the dredging or filling of playas, prairie potholes, and vernal pools and to exclude stream diversions or relocations
16. Tulsa District should condition NWP F to allow us to gather information on how potential applicants are proposing to use this permit.
17. Tulsa District should condition NWP F to require Notification for any proposal and coordinate with the agencies.
18. Tulsa District should condition all NWPs to require Notification for stream diversion or relocation, and the construction of stormwater management systems within perennial, intermittent, or ephemeral streams and coordinate with the agencies.
19. Tulsa District should condition all NWPs to require Notification and coordinate with the agencies for any proposal in Big Eagle/Cucumber Creek, tributary to the Mountain Fork River, from its confluence with the Mountain Fork River upstream to the SH 259 bridge.

ENCLOSURE 3

The following list of aquatic resources of concern in Oklahoma and portions of adjoining affected States were suggested regional conditions in response to the July 1, 1998, public notice.

Federally-listed Threatened, Endangered and Proposed Species

Leopard darter (threatened)

Little River, Southeast Oklahoma, entire watershed

Glover River, Southeast Oklahoma, entire watershed

Mountain Fork River, Southeast Oklahoma, entire watershed

Neosho madtom (threatened)

Grand (Neosho) River, Northeast Oklahoma, watershed above Tar Creek confluence

Ozark cavefish (threatened)

Spavinaw Creek, Northeast Oklahoma, entire watershed

Grand Lake watershed, Northeast Oklahoma, in Delaware County

Arkansas River shiner (proposed)

Cimarron River, watershed within Beaver, Harper, and Woods Counties in Oklahoma, Clark and Meade Counties in Kansas

Canadian River, watershed within Blaine, Caddo, Canadian, Cleveland, Custer, Dewey, Ellis, Grady, Hughes, McClain, McIntosh, Pittsburg, Pontotoc, Pottawatomie, Roger Mills, and Seminole Counties in Oklahoma; Quay County in New Mexico; Hemphill, Hutchinson, Moore, Oldam, Potter, and Roberts Counties in Texas.

Ouachita rock-pocketbook (endangered)

Kiamichi River, Southeast Oklahoma, watershed above Hugo Reservoir

Little River, Southeast Oklahoma, entire watershed

Winged mapleleaf (endangered)

Kiamichi River, Southeast Oklahoma, watershed above Hugo Reservoir

Little River, Southeast Oklahoma, entire watershed

Grand (Neosho) River, Northeast Oklahoma, watershed above Tar Creek confluence

Muddy Boggy River, Southeast Oklahoma, entire watershed

Interior least tem (endangered)

Cimarron River, watershed within Beaver, Harper, Woods, Woodward, Major, Blaine, Kingfisher, Logan, Payne, Pawnee, and Lincoln Counties in Oklahoma.

Canadian River, watershed within Blaine, Caddo, Canadian, Cleveland, Custer, Dewey, Ellis, Grady, Hughes, McClain, McIntosh, Pittsburg, Pontotoc, Pottawatomie, Roger Mills, and Seminole Counties in Oklahoma.

Arkansas River, watershed within Kay, Noble, Osage, Pawnee, Creek, Tulsa, Wagoner, Muskogee, and Cherokee Counties in Oklahoma.

Continued from Enclosure 3

Salt Fork of the Arkansas River, Salt Plains National Wildlife Refuge and vicinity in Alfalfa County, Oklahoma.

Whooping crane (endangered)

Wintering areas in Alfalfa County, designated critical habitat at **Salt Plains National Wildlife Refuge**.

Bald eagle (threatened)

Nesting areas in Haskell, Sequoyah, Love, Noble, Muskogee, McIntosh, Osage, Tulsa, Cherokee, Adair, Murray, Delaware, Pittsburg, LeFlore, and Payne Counties.

State Listed Endangered and Threatened Species

Longnose Darter (*Percina nasuta*) and Blackside Darter (*E. maculata*)

Lee Creek and **Little Lee Creek** Watershed in eastern Sequoyah County and southeastern Adair County

Neosho Mucket (*Lampsilis rafinesqueana*)

Illinois River above the floodpool of Tenkiller Reservoir and the entire mainstems of the **Baron Fork** and **Flint Creek**

Cave Crayfish (*Cambarus tartarus*)

All of the **Spavinaw Creek** drainage basin in Delaware County

Arkansas River Shiner (*Notropis girardi*)

The mainstem of the **Canadian River** (aka **South Canadian River**) from the **Eufaula Reservoir** floodpool upstream to the Oklahoma/Texas stateline; and the mainstem of the **Cimarron River** in Beaver and Harper Counties.